

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
T T) OAH No. 21-2590-ADQ
) Agency No.
_____)

DECISION

I. Introduction

T T filed an application for continued Food Stamps and Temporary Assistance benefits for her household. Both on her written application and in her interview with a Division of Public Assistance Eligibility Technician, Ms. T falsely identified her daughter, S E, as part of her current household. Because S was and continues to be in foster care, and not living with Ms. T, she ultimately obtained more Temporary Assistance and Food Stamps benefits than those to which she was legally entitled. The Division of Public Assistance Fraud Control Unit brought this action against Ms. T to establish that she intentionally committed violations of the Food Stamps and Alaska Temporary Assistance Program rules, and to implement the associated penalties for those violations.

II. Facts

T T and U E are the parents of S E. S has been in state custody since 00/00/2020, when she was eight days old.¹ Since entering foster care S has lived in a foster home, and not with her parents.²

On October 30, 2020, Ms. T submitted an Eligibility Review Form for continued Food Stamp and Alaska Temporary Assistance benefits.³ The Eligibility Review Form requires applicants to identify the members of their household. Ms. T identified her household as consisting of herself, her husband, U E, and their 6-month-old daughter, S E.⁴ At the time Ms. T submitted this form, however, S had been in foster care outside the home for nearly four months.⁵

¹ Ex. 2, Ex. 8, p. 1.
² Ex. 2; Jennings test.
³ Ex. 8.
⁴ Ex. 8, p. 1.
⁵ Ex. 10; Jennings test.

The Division’s Eligibility Review Form includes a four-page section titled “Your Rights and Responsibilities.”⁶ This section advises applicants of various reporting requirements as well as fraud penalties associated with failing to comply with those requirements.

The Eligibility Review Form that Ms. T submitted was signed by her beneath a section, titled “STATEMENT OF TRUTH,” certifying “under penalty of perjury” that the information contained in the application was true and correct.⁷ The certification also includes the following acknowledgement: “I have read or had read to me the Rights and Responsibilities section of the application and I understand my rights and responsibilities, including fraud penalties, as described in this application.”⁸

On December 3, 2020, Ms. T was interviewed by Division Eligibility Technician Tania Mercado as part of the review of her recertification application. As is standard practice in eligibility interviews, Ms. Mercado reviewed the Rights and Responsibilities document with Ms. T at the start of the interview, and documented that Ms. T understood and had no questions about those provisions. In the interview, Ms. T again affirmed that S was a member of the household she shared with Mr. E. At the time of the interview, S had been in foster care and placed outside the T-E home for nearly five months.⁹

Based on her written application and interview statements, Ms. T was approved to receive Food Stamp benefits and Temporary Assistance benefits for the three-person household consisting of herself, Mr. E, and S.¹⁰ She continued to receive Temporary Assistance and Food Stamp benefits through at least June 2021.¹¹

The Division did not learn of possible inaccuracies in Ms. T’s public benefits until late May 2021. At that time, the Division’s Fraud Control Unit was notified that Ms. T and Mr. E had claimed S as a household member on their benefits application when she did not live with

⁶ Ex. 7, pp. 1-4.

⁷ Ex. 8, p. 5.

⁸ Ex. 8, p. 5.

⁹ Ex. 10; Jennings test.

¹⁰ For reasons that are not material to this case, the actual amount of benefits the household then received was lower because during the period in question Ms. T and Mr. E were subjected to a program participation penalty that had reduced their actual benefit amounts. The net result of this penalty having been imposed during the same period as is now at issue in this case is that the household was paid fewer benefits overall, and therefore has a smaller overpayment than it otherwise would have had.

¹¹ Ex. 12, pp. 1 (Food Stamps), 2 (Temporary Assistance); Johnson test. Ex. 12, p. 1 suggests that the Household may have received Food Stamps through October 2021, but the Loss Statement Summary submitted by the Division focuses on the period from November 2020 through June 2021. Ex. 12, p. 3.

them and was instead in the state foster care system.¹² Investigator Wynn Jennings contacted OCS and received verification of S's placement outside the home.¹³ Investigator Jennings also wrote to Ms. T in June but got no response.¹⁴

As part of the Division's investigation, Eligibility Technician III Daryl Johnson analyzed the benefits paid to Ms. T and the benefits for which she was actually eligible, and prepared a Loss Statement Summary based on that analysis.¹⁵ The total amount of overpayments identified in the Loss Statement Summary is \$4,132, of which \$3,654 are overpaid Temporary Assistance Benefits, and \$478 are overpaid Food Stamps benefits, as follows:

(1) Because Alaska Temporary Assistance Program benefits are only available to households with children, if Ms. T had disclosed that S was not a member of the household, the household would not have received *any* benefits for the months of November through March.¹⁶ A new pregnancy rendered Ms. T eligible on that basis as for mid-April through June of 2021, but, even then, the number of eligible household members was only one, rather than the three for whom benefits had previously been authorized.¹⁷ From November 2020 through June 2021, between the benefits received during months for which she was completely ineligible and the benefits received during months when she was eligible but for a smaller household size than she had claimed, Ms. T received a total of \$3,654 in ATAP benefits for which she was not eligible.¹⁸

(2) Because Food Stamp benefits during this time period were retroactively increased by various pandemic-related federal measures, the ultimate amount of Ms. T's overpaid Food Stamp benefits is lower than it otherwise would have been. As a result of these measures, the only months for which Ms. T's Food Stamps amount ultimately exceeded the amount she received were April, May, and June 2021.¹⁹ For those months, Ms. T's household received

¹² Ex. 2; Jennings testimony.

¹³ Ex. 2.

¹⁴ Ex. 11. The copy sent by first class mail was not returned; the copy sent by certified mail was returned as "unclaimed." Jennings test.; Ex. 11, p. 2.

¹⁵ Johnson test.; Ex. 12.

¹⁶ Johnson test.; Ex. 12, p. 3.

¹⁷ Johnson test.; Ex. 12, p. 3.

¹⁸ Ex. 12, p. 3. From November 2020 through March 2021, Ms. T received between \$429 and \$498 per month in Temporary Assistance benefits at a time when the household was eligible for none. From April through June 2021, Ms. T received a total of \$2,405 in ATAP benefits, when the household's total eligibility for that period was \$1,165.

¹⁹ Johnson test.; Jennings test.

benefits based on a household of three, when the household size for benefits purposes was only two people. This resulted in an overpayment totaling \$478.²⁰

A hearing on the Division's request for Administrative Disqualification was set for January 27, 2022, and multiple attempts were made to provide notice to Ms. T. On December 23, 2021, the Fraud Control Unit mailed Ms. T a Thirty-Day Advanced Notice packet, notifying her of the hearing scheduled in this matter. The 27-page packet, which contained a summary of the allegations and evidence as well as a statement of hearing rights, was sent via regular first-class mail and certified, return-receipt requested mail.²¹ Ms. T did not pick up the packet sent by certified-mail.²²

On January 14, 2022, the Division mailed its exhibit packet to Ms. T – again by both certified and regular mail.²³ As of the date of the hearing, the Certified mail had not been picked up.²⁴

Meanwhile, on December 28, 2021, the Office of Administrative Hearings mailed Ms. T a Notice of Hearing in this matter. The Notice identified the hearing date and time, and the phone number the judge would use to call Ms. T for the hearing.

The hearing was held on January 27, 2022, as scheduled. Ms. T did not answer her phone when called for the hearing, and did not return a voice mail message left for her – either at the time of the hearing or thereafter. As allowed by applicable regulations, the hearing went forward in her absence.²⁵ Testimony was taken from Division Investigator Wynn Jennings; Tania Mercado, the Division Eligibility Technician who interviewed Ms. T and Mr. E in conjunction with their application; and Daryl Johnson, the Division Eligibility Technician who prepared the Loss Statement Summary analyzing the difference between the amount of benefits received by Ms. T and the amount for which she was actually eligible. Exhibits 1 – 12 were

²⁰ Ex. 12, p. 3.

²¹ Ex. 3; Ex. 4.

²² Ex. 4.

²³ Ex. 5; Jennings test.

²⁴ Ex. 6.

²⁵ Once proper notice has been given, the Food Stamp regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. See 7 CFR § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear. The Temporary Assistance regulations provide for a hearing to be conducted without the recipient in the event of a failure to appear, and provide a ten-day window for the recipient to show good cause for failing to appear. 7 AAC 45.585(b), (c).

admitted without objection. The record was held open for ten days after the hearing pursuant to 7 AAC 45.585(c), but Ms. T did not contact OAH during this time. This decision now issues.

III. Discussion

A. SNAP Program IPV

It is prohibited by federal law for a person to seek Food Stamp benefits by making false or misleading statements or by concealing or withholding facts.²⁶ In this case, the Division seeks to establish an IPV, and to do so it must prove the elements of that IPV by clear and convincing evidence.²⁷

It has not been alleged that Ms. T has ever been found to have committed a prior IPV, and therefore both alleged IPVs will be evaluated on the assumption that this is a first-time violation. Other than certain exceptions not alleged to apply here, federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.²⁸

Both eligibility and benefit levels are determined based upon household composition.²⁹ False statements about household composition are, therefore, considered to have been made for the purpose of acquiring benefits.³⁰ It is clear and undisputed that throughout the recertification process Ms. T made false statements about her household composition by falsely claiming that S was living with her at a time when S was, in fact, in foster care. She did this multiple times, first by listing S as a “person who lives with you” on the application, then again saying S lived with her in the follow-up eligibility interview.³¹ Plainly, given S’s custody status, this was a misrepresentation.

The remaining issue is whether the misrepresentation was intentional. As Ms. T did not testify, the answer to this question must be found through the totality of the surrounding circumstances. In this case, it is not a close question. There can be no serious question that Ms. T knew, when she made these statements, that they were untrue. She knew that S did not live

²⁶ See, e.g., 7 U.S.C. § 2015(b).

²⁷ 7 C.F.R. § 273.16(e)(6).

²⁸ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

²⁹ 7 C.F.R. § 273.1; 7 C.F.R. § 273.8; 7 C.F.R. § 273.9.

³⁰ 7 C.F.R. § 273.16(c).

³¹ Ex. 8, p. 1; Ex. 9, p. 1.

with her, but rather, had been in state custody and lived in a foster home since she was eight days old.

Under these circumstances, there is simply no credible way to see Ms. T's statements to the contrary as anything other than an intentional, material misrepresentation. The evidence is clear and convincing that Ms. T committed and intended to commit an IPV.³²

B. ATAP IPV

It is likewise illegal to seek ATAP benefits by making false or misleading statements or by concealing or withholding facts.³³ In seeking to establish an IPV in the ATAP program, the Division must prove the elements of that IPV by clear and convincing evidence,³⁴ *i.e.*, that Ms. T intentionally misrepresented, concealed or withheld a material fact "for the purpose of establishing or maintaining a family's eligibility for ATAP benefits."³⁵

Again, no evidence has been offered that Ms. T has ever been found to have committed a prior ATAP IPV, and therefore the alleged IPV will be evaluated on the assumption that this is a first-time violation. A first-time IPV in the ATAP program results in a six-month disqualification.³⁶

As discussed in the previous section, it is clear (1) that Ms. T claimed that S was living with her at a time when S was in fact living in a foster home, (2) that she did so to receive benefits, and (3) that she did so knowing the facts she was stating were not true at the time she stated them.

Because ATAP benefits are only available where a household contains a minor, biologically-related child, whether there is a dependent child living in the home is clearly a material fact for the purpose of determining ATAP eligibility.³⁷

Ms. T obviously knew at the time of her application that S was not, in fact, living in her home. The Division has therefore met its burden of proving by clear and convincing evidence that Ms. T has committed a first IPV of the ATAP program.

³² See 7 C.F.R. 273.16(e)(6).

³³ 7 AAC 45.580(n).

³⁴ 7 AAC 45.585(e).

³⁵ 7 AAC 45.580(n).

³⁶ AS 47.27.015(e)(1); 7 AAC 45.580(d).

³⁷ AS 47.27.020(a); 7 AAC 45.195; 7 AAC 45.225.

IV. Conclusion and Order

A. Food Stamps

Ms. T has committed a first time Intentional Program Violation of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period.³⁸ The Food Stamp disqualification period shall begin April 1, 2022.³⁹

This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.⁴⁰ For the duration of the disqualification period, Ms. T's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.⁴¹

The Division shall provide written notice to Ms. T and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.⁴²

If over-issued Food Stamp benefits have not been repaid, Ms. T is now required to make restitution.⁴³ If Ms. T disagrees with the Division's calculation of the benefits amount to be repaid, she may request a hearing on that limited issue.⁴⁴

B. ATAP

Ms. T has committed a first time ATAP Intentional Program Violation and so is disqualified from participation in the Alaska Temporary Assistance Program for a period of six months.⁴⁵ If Ms. T is currently receiving ATAP benefits, her disqualification period shall begin as provided in 7 AAC 45.580(f)(1). If Ms. T is not currently an ATAP recipient, her disqualification period shall be postponed until she applies for, and is found eligible for, ATAP benefits.⁴⁶

³⁸ 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

³⁹ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995); *Matter of K.L.B.*, OAH No. 14-1488-ADQ (Commissioner of Health and Social Services, December 2014) .

⁴⁰ 7 C.F.R. § 273.16(b)(11).

⁴¹ 7 C.F.R. § 273.11(c)(1).

⁴² 7 C.F.R. § 273.16(e)(9)(ii).

⁴³ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

⁴⁴ 7 C.F.R. § 273.15.

⁴⁵ AS 47.27.015(e)(1); 7 AAC 45.580(d).

⁴⁶ 7 AAC 45.580(g).

This disqualification applies only to Ms. T, and not to any other individuals who may be included in her household.⁴⁷ For the duration of the disqualification period, Ms. T's needs will not be considered when determining ATAP eligibility and benefit amounts for her household. However, Ms. T must report her income and resources, as they may be used in these determinations.⁴⁸

The Division shall provide written notice to Ms. T and any other household members of the ATAP benefits they will receive, if any, during the period of disqualification.⁴⁹

If over-issued Temporary Assistance benefits have not been repaid, Ms. T is now required to make restitution.⁵⁰ If Ms. T disagrees with the Division's calculation of the benefits amount to be repaid, she may request a hearing on that limited issue.⁵¹

Dated: February 8, 2022

Signed

Cheryl Mandala

Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of March, 2022.

By: *Signed*

Signature

Cheryl Mandala

Name

Administrative Law Judge

Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

⁴⁷ 7 AAC 45.580(e)(1).

⁴⁸ 7 AAC 45.580(e)(3).

⁴⁹ 7 AAC 45.580(k).

⁵⁰ 7 AAC 45.570(b).

⁵¹ 7 AAC 45.570(l).